88-1945

Office - Supreme Court, U.S
FILED
MAY 2 1984
ALEXANDER L. STEVAS,
CLERK

No.

In The

Supreme Court of the United States

October Term, 1983

PETER J. HAUGHEY on behalf of the
ESTATE OF PETER M. HAUGHEY,

Petitioner,

—against—

MARGARET M. HECKLER, Secretary of
Health and Human Services,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETER J. HAUGHEY
Petitioner, pro se
10 Birchfield Ave.
North Babylon, N.Y. 11703
(516) 669-1082

QUESTION PRESENTED

Is the decision of the 2nd Circuit Court of Appeals in the present case—whereupon appellant is denied his deceased son's accrued social security benefits; partly upon the premise that social security benefits are not property and not payable to the deceased's estate, in conflict with the decision of the 11th Circuit Court of Appeals in *United States v. Devall* wherein that court ruled social security benefits are to be included in the property of the estate and that Congress had intended social security benefits to be property of the estate in the first instance?

TABLE OF CONTENTS

Page

Question Presented ..... Preface

Opinion Below 1

Jurisdiction 2

Statement of the Case 2

Argument 3

Conclusion 4

Appendix A: Order of the U.S. Court of Appeals, Second Circuit, decided February 2, 1984 5

Appendix B: Decision of the U.S. District Court, Eastern District of New York 8

TABLE OF AUTHORITIES

Page

United States v. Devall, 707 F2d 1513 (1983) ..... Preface, 3, 4

Title XVI of the Social Security Act Supplemental Security Income, 42 U.S.C. 1381, 1383(b) 2, 3

Chapter 13 of the Bankruptcy Act, 11 U.S.C. 1301 4

8 U.S.C. 1254(f) 2

42 U.S.C. 405(g) 2

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1983

PETER J. HAUGHEY on behalf of the
ESTATE OF PETER M. HAUGHEY,

Petitioner,

—against—

MARGARET M. HECKLER, Secretary of
Health and Human Services,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

The Petitioner, Peter J. Haughey, respectfully prays that a Writ of Certiorari issue to review the Judgment of the U.S. Court of Appeals for the Second Circuit rendered this proceeding on February 2, 1984.

OPINION BELOW

Petitioner's application for SSI payments due to his deceased son before his death, was denied by the Agency. Application to the District Court for review and reversal was denied. The District Court's decision was affirmed by the Court of Appeals for the Second Circuit, February 2, 1984.

JURISDICTION

The Statutory provision conferring jurisdiction on this Court is 28 U.S.C. 1254(f). The Court of first instance was the U.S. District Court which had jurisdiction of the matter under 42 U.S.C. 405(g) dealing with judicial review of final decisions of the Secretary.

STATEMENT OF THE CASE

Peter M. Haughey was enrolled in the Supplemental Security Income program, Title XVI of the Social Security Act 42 U.S.C. 1381 from March of 1979 until his death in April of 1981; the reason for his eligibility being that he was disabled due to Muscular Dystrophy. In early 1981 an underpayment of $1,700 was discovered whereupon he died in April of 1981 without ever receiving the funds, wherein the deceased's father instituted appropriate proceedings to recover this money for reimbursement of the past care and maintenance he had provided to his son. Thereafter, as affirmed by the 2nd Circuit, the administrative agencies, appeals council, and U.S. District Court ruled that 1631(b) of the act encompasses not only living recipients under the program but deceased ones also and therefore underpayments can only be made to an eligible spouse; they further ruled that in the case of deceased recipients underpayments can not be considered as property and are therefore undistributable to anyone other than the eligible spouse.

ARGUMENT

This case revolves about the interpretation and implementation of 42 U.S.C. 1383(b) entitled "Overpayments and Underpayments" which states "(b) Whenever the Secretary finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or his eligible spouse (or by recovery from the estate of either). The Secretary shall make such provision as he finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purpose of this title, or be against equity or good conscience, or (because of the small amount involved) impede efficient administration of this title.

The case of *United States v. Devall* turns about chapter 13 of the Bankruptcy Act, specifically 11 U.S.C. 541 "(c) (1) Except as provided in paragraph (2) of this subsection (dealing with spendthrift trusts) an interest of the debtor in property becomes property of the estate ... notwithstanding any provision— (A) that restricts or conditions transfer of such interest by the debtor.

Even though the case at hand and the case of *United States v. Devall* evolve from different contexts, one involving a claim for past due Social Security benefits and the other involving debtors in bankruptcy proceedings, the decisions at one point or another turn upon a common question—how are Social Security benefits to be viewed; with the 2nd Circuit affirming lower decisions that these benefits can not be viewed as property and the 11th Circuit ruling that certain provisions of Chapter 13 of the Bankruptcy Act would not have been enacted if Congress had not intended Social Security benefits to be property in the first instance.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the decision of the Courts below.

Respectfully submitted,

PETER J. HAUGHEY
Petitioner, pro se
10 Birchfield Ave.
North Babylon, N.Y. 11703

APPENDIX A

UNITED STATES COURT OF APPEALS
Second Circuit

United States Court of Appeals
Second Circuit
Filed February 2, 1984
A. Daniel Fusaro, Clerk

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the second day of February, one thousand nine hundred and eighty four.

Present:
Hon. J. Edward Lumbard
Hon. James L. Oakes
Hon. Richard J. Cardamone,
Circuit Judges

83-6292

Peter J. Haughey on behalf of the
Estate of Peter M. Haughey,

Appellant,

v.

Margaret M. Heckler, Secretary of
Health and Human Services,

Appellee.

ORDER

This is an appeal by Peter J. Haughey from a Decision and Order of the United States District Court for the Eastern District of New York, Judge Jacob Mishler, affirming the Secretary's conclusion that the appellant was not entitled to receive supplemental security income benefits ("SSI") which had become due to Peter M. Haughey, appellant's deceased son. We affirm.

On March 22, 1979, the appellant's son filed for SSI benefits. His application was approved and he began receiving benefits. Subsequently, in March of 1981, the Secretary discovered that the claimant was receiving less than that to which he was entitled. Before any additional payments could be made, however, the claimant died. Appellant then filed an application with the Secretary seeking to have the additional payments made to his son's estate, arguing on both statutory and constitutional grounds that he was entitled to the additional money. The Secretary ruled against the appellant, and, after appellant instituted this action in federal court, Judge Mishler affirmed.

The issue presented is whether an underpayment of SSI due a deceased beneficiary is payable to the deceased's estate or next of kin, other than an eligible spouse. Despite appellant's forceful and extensive arguments, the law is clear and unambiguous, and supports the Secretary's and the District Court's findings that no such payments may be made. Judge Mishler's citation of the governing statute, 42 U.S.C. 1383(b)(1) (Supp. 1985), the relevant regulation, 20 C.F.R. § 416.542(b) (1982), and a Ninth Circuit case discussing the same issue, *Smith v. Califano*, 597 F.2d 152 (9th Cir.), *cert. denied, sub nom Smith v. Harris*, 444 U.S. 980 (1979), are dispositive of all arguments urged by appellant. The simple fact is that however one regards the policy of not extending a

deceased's benefits to his/her estate, Congress has made its will plain, and the due process clause of the constitution does not require otherwise. *See Flemming v. Nestor*, 363 U.S. 603 (1960). Appellant's equal protection arguments are utterly without merit.

Affirmed.

J. Edward Lumbard
James L. Oakes
Richard C. Cardamone

Circuit Judges.

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

APPENDIX B

CV 82-1298
Memorandum of
Decision and Order
June 16, 1983

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
---------- X

PETER J. HAUGHEY o/b/o
the Estate of Peter M. Haughey,

Plaintiff,

—against—

MARGARET M. HECKLER,
Secretary of the United States
Department of Health and
Human Services,

Defendant.
---------- X

APPEARANCES:

PETER J. HAUGHEY
Plaintiff *Pro Se*
10 Birchfield Avenue
North Babylon, New York 11703

HONORABLE RAYMOND J. DEARIE
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201
Jo Davis, Assistant
U.S. Attorney

MISHLER, District Judge

This action is brought under sections 205(g) and 1631(c)(3) of the Social Security Act, as amended, 42 U.S.C.§ 405(g), 1383(c)(3) (the "Act"), to review a final decision of the Secretary of Health and Human Services (the "Secretary"), denying plaintiff's request for payment of an underpayment of supplemental security income benefits ("SSI"), which had become due to plaintiff's deceased son. Before this court is defendant's motion for a judgment on the pleadings pursuant to Rule 12(c) of the Fed. R.Civ.P.

Since none of the facts are in dispute, familiarity with both the procedural history and the record of this case will be assumed.

On appeal, this court's function is to examine the record as a whole to determine whether the Secretary's conclusions are supported by substantial evidence. *Richardson v. Perales*, 402 U.S. 389, 91 S.Ct. 1420 (1971). The only issue that must be resolved is whether an underpayment of SSI due a deceased beneficiary is payable to the estate or any next of kin.

Underpayments of Social Security benefits are governed by 42 U.S.C. § 1383(b)(1) (Supp. 1983), which, in relevant part, reads: "Whenever the Secretary finds ... less than the correct amount of benefits has been paid with respect to any individual, proper adjustment ... shall, ... be made by appropriate adjustments in *future payments to such individual ... or payment to ... his eligible spouse.*" *Id.* (emphasis supplied). The Secretary's conclusion that underpayments are payable *only* to (1) the beneficiary or (2) the eligible spouse, and not the estate of a deceased beneficiary is supported by the plain meaning of the statute, the applicable regulation[1] and case law.[2]

We therefore find that the Secretary's conclusion that underpayments of SSI benefits are not payable to a deceased beneficiary's estate or to any other person except an eligible spouse is amply supported by both legislative history and case law.

The plaintiff further contends that once the Social Security office determined that additional payments were due the deceased, this underpayment became the deceased's vested property right, which, under the Fifth Amendment to the Constitution, could not be denied without due process of law. The plaintiff argues that these payments are due the decedent's estate for distribution under the state's laws of intestate distribution. We find this argument to be without merit. In *Flemming v. Nestor*, 363 U.S. 603, 80 S. Ct. 1367 (1960), the Supreme Court determined that "a person covered by the Act has not such a right in benefit payments as would make every defeasance of 'accrued' interests violative of the Due Process Clause of the Fifth Amendment." *Id.* at 611, 80 S. Ct. at 1373. Since the Court has determined that Social Security benefits do not "vest" in a property sense, there can be no property for distribution under the state's Canons of Descent.

For the foregoing reasons, the decision of the Secretary is affirmed, and it is

SO ORDERED.

JACOB MISHLER
U.S.D.J.

FOOTNOTES

[1](b) *Underpaid recipient dead—underpayment payable.* If a recipient dies before the amount due him has been paid to him, or before he endorses the check representing the correct payment, the amount of the underpayment may be paid *only to his surviving spouse* [if eligible] ... *No underpayment may be paid to the estate of any underpaid recipient,* the estate of the surviving spouse, *or to any survivor other than the living-with eligible spouse.*

20 C.F.R. §416.542(b) (1982) (emphasis supplied). *See* H. Rep. No. 231, 92nd Cong, 2d Sess. 3, *reprinted in* 1972 U.S. Code Cong. & Ad. News 4989, 5141.

[2]In *Smith v. Califano,* 597 F.2d 152 (9th Cir.), *cert. den. sub nom. Smith v. Harris*, 444 U.S. 980, 100 S. Ct. 481 (1979), the court construed the statute, the regulation and the legislative history to support the conclusion that posthumous underpayments are payable only to the surviving eligible spouse and not to the estate of the decedent.

JUDGMENT
CV 82-1298 (JM)

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
June 30, 1983

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

PETER J. HAUGHEY o/b/o
the Estate of Peter M. Haughey,

Plaintiff,

—against—

MARGARET M. HECKLER,
Secretary of the United States
Department of Health and
Human Services,

Defendant.

A memorandum and order of Honorable Jacob Mishler, United States District Judge, having been filed on June 17, 1983, affirming the decision of the Secretary of Health and Human Services, it is

ORDERED and ADJUDGED that the plaintiff take nothing of the defendant; and that the decision of the Secretary of the Department of Health and Human Services is affirmed.

Richard H. Weare
Clerk of Court

Dated: Brooklyn, New York
June 30, 1983